

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

**FILED**

DEC 22 2005

CARLO M. BREWER,

Petitioner

v.

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CIVIL ACTION NO. 1:05CV3  
CRIMINAL NO. 1:03CR42-1  
(Judge Keeley)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On January 3, 2005, pro se petitioner Carlo M. Brewer ("Brewer") filed a petition pursuant to 28 U.S.C. § 2255. The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 83.09.

On September 19, 2005, Magistrate Judge Kaull issued an Opinion and Report and Recommendation ("R&R") recommending that Brewer's motion to vacate and supplemental motion to vacate be denied and the case be dismissed without prejudice. (Doc. No. 20, case No. 1:03CR42-1 & Doc. No. 4, case No. 1:05CV3.) The Magistrate Judge determined that Brewer's § 2255 motion filed on July 1, 2005 is untimely and that Ms. Carmen Taylor, Brewer's sister, failed to establish next friend status.

The R&R also specifically warned that failure to object to the recommendation would result in the waiver of any appellate rights on this issue. Though the Brewer filed, and the Court subsequently

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**ORDER ADOPTING REPORT AND RECOMMENDATION**


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granted, a motion for extension of time to file his objections, no objections were filed by the October 10, 2005 deadline.<sup>1</sup>

Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety. Accordingly, the Court **DENIES** the motion to vacate (Doc. No. 17, case No. 1:03CR42 & Doc. No. 1, case No. 1:05CV3) and **ORDERS** Brewer's case **DISMISSED WITHOUT PREJUDICE** and stricken from the Court's docket.

The Clerk is directed to mail a copy of this Order to the pro se petitioner via certified mail, return receipt requested and to counsel of record.

Dated: December 22, 2005.

  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).